



## Shelby County Attorney's Office

### Memorandum

### Via Email

To: Commissioner George Flinn  
General Government Committee Chairman

From: Christy L. Kinard *CK*  
Assistant County Attorney

Date: November 4, 2009

Subject: Proposed Public Notice Ordinance for Boards, Commissions, Authorities, and  
Other Public Bodies [A5074-09]

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Please accept this memorandum in response to various questions that have been raised relative to the proposed public notice ordinance. On September 9, 1974, the Quarterly County Court adopted a resolution as Item No. 35 establishing public notice procedures for the "Quarterly County Court, County Executive Committee and Boards and Commissions of the County of Shelby" ("1974 Resolution"). Nothing has been found to indicate that this resolution has been amended or repealed and, therefore, it continues to be effective. When applied to the current charter form of government in Shelby County, the resolution should be interpreted to mean the public notice procedures apply to the County Commission, all committees of the County Commission, and all boards, commissions, authorities and other public bodies ("boards") of Shelby County.

The 1974 Resolution designated the bulletin board on the first floor of the Administration Building as the official bulletin board for posting notices on behalf of the County.<sup>1</sup> For any body to which the public notice procedures apply that has a definite meeting date and location established (e.g., every third Thursday at 2:00 in the 4<sup>th</sup> Floor Conference Room), the 1974 Resolution authorized a list of such "permanent meeting dates and location of said meetings" to be posted on the bulletin board and remain there until such time as the information needs to be updated. For boards without a definite meeting date and location, they are required to post notice on the bulletin board at least 48 hours in advance of any regular or special called meeting and the notice must include the date, time, and location of each such meeting.

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<sup>1</sup> It is believed that designating a "board" for posting notices comes from the Open Meetings Act being referred to as the "sunshine law" and the boards where notices were traditionally posted being referred to as "sunshine boards."

Since public notice procedures for boards is a matter governing the government and is of a permanent nature, the 1974 Resolution has been brought to the County Commission in the form of an ordinance. [Shelby County Charter, Art. V, § 5.03(A).] The purpose of the proposed public notice ordinance is to codify the procedures established by the 1974 Resolution, to provide a method by which the Public Affairs Office can post notices on the bulletin board in a timely manner, and to create a single uniform procedure. This uniform procedure will be relied upon in the event it becomes necessary to show that a board has provided adequate public notice. The procedures under the proposed public notice ordinance can be summarized as follows:

- The notice will provide the public with the name of the board, the date and time of the meeting, the location where the meeting will be held, and the physical and website addresses where the public can get a copy of the board's agenda.
- All boards must submit their notice to the Public Affairs Office at least 72 business hours before a meeting so the notice is posted on the bulletin board at least 48 hours before the meeting.
  - o Each board with a permanent meeting will notify the Public Affairs Office of its notice information and will only be required to contact Public Affairs thereafter if that information changes or if they have a special called meeting.
  - o Each board without a permanent meeting will be required to provide notices on an ongoing basis.
  - o NOTE: Many boards send notice of their meetings by email and/or post agendas on the Internet. Although such additional methods of public notice may be encouraged, the legal issue will be whether the Public Affairs Office posted the notice on the bulletin board at least 48 hours before the meeting.
- The Public Affairs Office will also post notices on the Shelby County website.
- All boards must have their agendas available at the physical and website addresses contained in the notice at least 48 hours before each meeting.
  - o NOTE: Many boards send agendas by email with notice of their meetings and/or post agendas on the Internet. Although such additional methods of public notice may be encouraged, the legal issue will be whether the agenda was available at the physical and website addresses listed in the bulletin board notice.

It is anticipated that at least three amendments to the proposed public notice ordinance will be presented to the General Government Committee this week for consideration. Please accept the following in response to those amendments:

1. Boards must advertise public notice in newspapers. As stated above, it has been the practice of Shelby County to post notice of public meetings in the Administration Building at least 48 hours before a meeting since 1974 and there have been no legal challenges to the adequacy of the public notice procedures. It is the opinion of the County Attorney's Office that requiring boards to advertise goes beyond what is required for adequate public notice and creates another element that must be met in the event of a legal challenge to the adequacy of the public notice. Further, such a requirement may result in boards having to meet a newspaper publication schedule that is earlier than the schedule required by the ordinance and will cause boards to

incur the expense of advertising which could be costly especially for *boards that meet* more frequently.

2. Boards must use Sire. The proposed public notice ordinance is designed to create a uniform procedure for posting notices in compliance with the Tennessee Open Meetings Act. The Sire ordinance is an administrative requirement established by the County Commission and should not be linked to the legal requirements of the Tennessee Open Meetings Act. It is the opinion of the County Attorney's Office that the insertion of a reference to the Sire ordinance requirement goes beyond what is required for adequate public notice and creates another element that must be met in the event of a legal challenge to the adequacy of the public notice.
3. Boards must have "sufficiently detailed" agenda. Again, the intent of the proposed public notice ordinance is to create a uniform procedure for posting notices in compliance with the Tennessee Open Meetings Act. It is the opinion of the County Attorney's Office that boards should be required to have their agendas available for public viewing at least 48 hours before their meetings, but to require the agenda describe each item in "sufficient detail" and have supporting documents available goes beyond what is required for adequate public notice and creates another element that must be met in the event of a legal challenge to the adequacy of the public notice. It should also be noted that agendas for regular meetings are subject to change at any time because items can be added and some boards regularly include New Business and Old Business items which require no further detail.

cc: All County Commissioners  
Brian L. Kuhn, County Attorney  
Craig Willis, Assistant County Attorney  
Rhonda Turner, Public Affairs Officer  
Steve Summerall, Chief Administrator, County Commission